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April 2, 2018

Mary Becerra
Secretary of the Commission
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
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RE: Response to Objection to Duke Energy Indiana's Standard Contract Rider No. 50,
IURC 30-Day Filing No. 50119

Duke Energy Indiana herein responds to the Objection filed by the Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") (collectively, the "Objectors"). Duke Energy Indiana's 30-day filing ("30-Day Filing") complies with applicable Indiana state law and the Indiana Utility Regulatory Commission ("Commission") rules. *See generally* Ind. Code ch. 8-1-2.4; 170 IAC 4-4.1-1 *et seq.* Duke Energy Indiana made its filing in accordance with Indiana law and its filing was wholly complete and compliant with applicable laws and regulations, as filed. The Commission has accepted the same or similar filings from Duke Energy Indiana since 1985.

Duke Energy Indiana's 30-Day Filing Complies with State Law.

Duke Energy Indiana's 30-Day Filing was made pursuant to 170 IAC 4-4.1-10 ("Section 10") and fully complies with the requirements of that rule. The standard contract provides for a long-term arrangement, has evergreen provisions that do not contain a defined expiration date, and as required by the Public Utility Regulatory Policies Act ("PURPA") provides for a fixed rate (*i.e.*, not merely an "as-available" rate arrangement) which is refreshed each year so long as the QF desires to sell to Duke Energy Indiana. This standard contract has been available, and approved by the Commission, ever since the implementation of the Qualifying Facility ("QF") rules in 1985. This long-term, evergreen, and fixed rate contract complies with the requirement in Ind. Code § 8-1-2.4-4.

Under Ind. Code § 8-1-2.4-4, utilities must offer a contract with a fixed rate for a defined term and contractual provisions for a long-term arrangement. Duke Energy Indiana's offering has met and continues to meet these requirements. There is no defined tenor for the fixed rate offer under Indiana law or PURPA. The tenor of the fixed rate offer is left to the state's discretion in implementing PURPA considering reliability and cost impacts to customers. Section 210(b) of PURPA states the Commission's rules "*shall insure* that, in requiring any electric utility to offer to purchase electric energy from any [QF], the *rates* for such purchase *shall be just and reasonable to the electric consumers . . .*." Further, Section 2 of PURPA states:



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Congress finds that the protection of the public health, safety, and welfare, the preservation of national security, and the proper exercise of congressional authority .

... require —

- (1) a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers, [and]
- (2) a program to improve ... the reliability of electric service. . .

These foundational principles are also located in the Congressional record concerning PURPA §§201 and 210, and in FERC's Order No. 69 implementing PURPA. Duke Energy Indiana is in full compliance with PURPA, Indiana law and the Commission rules that implement PURPA in accordance with state requirements and local conditions determined by Indiana legislators and regulators.

Neither the CAC nor the EPLC have alleged that Duke Energy Indiana has failed to make available the long-term, evergreen contracts with rates refreshed each year to those facilities that qualify as a QF. Rather, the Objectors argue that Duke Energy Indiana simply does not include the term in its standard form of agreement. The contract term is left blank in the standard contract to account for the possibility that at the option of the QF, Duke Energy Indiana and the QF would enter into a contract of a period shorter than one year. If the Commission determines that Duke Energy Indiana should include a term of one year in the body of its standard contract, Duke Energy Indiana is willing to make such a change.

As stated above, Duke Energy Indiana's standard offer at this time is one year. This would include a fixed rate at that year's prevailing Rider 50 tariff. Duke Energy Indiana's one-year term is a long-term contract under prior FERC and appellate precedent. FERC has previously ruled that in implementing PURPA, the states and state regulatory authorities have "great latitude" to determine the manner of implementing the PURPA purchase obligation – and implementation is primarily effectuated by the avoided cost rate and terms and conditions of the purchase agreement.¹

Other states have addressed the issue directly and found that a one-year term is sufficient for purposes of compliance with PURPA. Recently, the Alabama Public Service Commission ("PSC") approved Alabama Power's proposal for a standard avoided cost contract for QFs. AL PSC Docket No. U-5213, 2017 WL 977573 (Mar. 7, 2017). With regard to the one-year term, the PSC stated that "in various PURPA-related actions regarding its PURPA regulations, FERC has offered broad guidance as to the length of contract sufficient to encourage the development

¹ See, e.g., *Exelon Wind* at 385. See also *Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, 45 Fed. Reg., 12214, 12230-31 (Feb. 25, 1980).



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of QFs.” First, the PSC cited to *Windham*, stating that “in one context, FERC has stated that the contract must be of a sufficient length to encourage investment.” *Id.*, citing *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P 61,134 (2016). Second, the PSC noted that FERC has stated that a long-term contract, in the context of PURPA, is “one year or longer,” citing to New PURPA Section 210(m) Regulations Applicable to Small Power Production Facilities and Cogeneration Facilities, Order No. 688-A, 119 FERC ¶ 61,305, at P 27 & n.17 (2007). Based on these “and other such [not cited] acknowledgements,” together with existing law and regulations, the PSC held Alabama Power’s proposed rate design “reasonable” as to both QFs and utility customers. *Id.* at 5.

Duke Energy Indiana has provided its Rider 50 since the implementation of PURPA in 1985, providing for an evergreen provision with fixed rates for one year. The rates are updated annually. Therefore, Rider 50 should be sufficient to obtain third-party financing. Duke Energy Indiana’s obligation under PURPA and state law is not going away, and the avoided cost rate provided to a QF is calculated in accordance with Commission rules and is not subject to significant variation each year. As demonstrated in Petitioner’s Ex. A to this letter, Duke Energy Indiana’s avoided cost has remained consistent over the past 10 years. Therefore, QF customers of Duke Energy Indiana have sufficient rate history and future certainty to obtain third-party financing if necessary.

While the Objectors PURPA analysis is helpful background information, it has no bearing on Duke Energy Indiana’s compliance filing made pursuant to the Commission’s rules and Indiana law. With its filing, Duke Energy Indiana merely updated its energy and capacity rates as required under the Commission’s rules. Duke Energy Indiana did not change its existing standard contract in any way. Additionally, Duke Energy Indiana’s standard offer and contract fully comply with PURPA. A one-year contract fulfills the PURPA requirement for a long-term contract.

Duke Energy Indiana’s Section 10 Filing Need Not Comply with 18 CFR §292.302(b)

Duke Energy Indiana made its filing pursuant to Section 10. That section does not require the provision of avoided cost information of the type outlined in 18 C.F.R. 292.302(b). The Objector’s argue that the 30-Day Filing made pursuant to Section 10 does not include the avoided cost information required by 18 CFR § 292.302(b). This is not a legitimate basis to object to Duke Energy Indiana’s 30-Day Filing. Duke Energy Indiana did not submit the filing to comply with 18 C.F.R. § 292.302(b), but to comply with Section 10. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of the annual 30-day filing required by Section 10. A filing cannot reasonably be held to violate Section 10 or be incomplete because it fails to include information not required by Section 10.



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Duke Energy Indiana presents the information requested in 18 CFR § 292.302(b) in its Integrated Resource Plan (“IRP”). Duke Energy Indiana provided this information to the Commission in its last IRP filing in November 2015. Duke Energy Indiana maintains that this information has no bearing on the approval and reauthorization of this Rider 50, and due to the recent change in the cadence of IRP filings Duke Energy Indiana will submit this information to the Commission as part of its 2018 IRP filing.

Initiation of a Statewide Docket to Investigate PURPA Implementation Is Not Appropriate At This Time

Objectors’ true purpose for their objections appears to be the initiation of a statewide docket to investigate Indiana’s implementation of PURPA. This is not a legitimate basis for objecting to the 30-day Filing, since Section 10 contemplates submission of the energy and capacity rates pursuant to the Commission’s 30-day filing procedures to avoid lengthy proceedings considering them.

In any event, Duke Energy Indiana does not support a statewide docket to investigate PURPA implementation. The very regulations cited by Objectors are being reviewed by the FERC in Docket No. AD16-16. *See* Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).² FERC’s Chairman, Neil Chatterjee, has explained the purpose of this investigation:

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation and modern realities.

Letter from Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).³ Moreover, Congress is currently considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. *Powering America: Reevaluating PURPA’s Objectives and its Effects on Today’s Consumers before the H. Energy and Commerce S. Comm.*⁴ Legislation has been introduced in the House of Representatives to

² Available at <https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf>.

³ Available at https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205.

⁴ Available at <https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/>.



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modernize PURPA. H.R. 4476, 115th Congress (2015).⁵ Given Congressional and FERC investigations into the need to update PURPA, any inquiry in Indiana, if appropriate, should await the outcome of these other PURPA inquiries because of the significant likelihood any changes would need to be considered by Indiana.

Conclusion

Insomuch as the Objectors have issue with the manner in which the State of Indiana has implemented PURPA, their forum should be FERC. Duke Energy Indiana has met all rules set forth by the IURC and its filing complies with all state laws. Therefore, the IURC should reject the Objection filed by the CAC and the ELPC and approve Duke Energy Indiana's 30-Day Filing for its Standard Contract Rider No. 50.

Further, the Commission should reject the Objector's request to open an exhaustive, far-reaching statewide investigation on this issue. The Commission's rules and implementation of its QF policy adequately satisfies PURPA and the intent of PURPA.

Respectfully submitted,

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⁵ Available at <https://www.congress.gov/bill/115th-congress/house-bill/4476/text>.

EXHIBIT A

Year	\$/kwh		\$/kw
	Energy	Capacity	
2006	0.034270		3.85
2007	0.032720		4.64
2008	0.032064		5.11
2009	0.024353		5.23
2010	0.026977		5.54
2011	0.031683		5.70
2012	0.033687		9.85
2013	0.028541		7.05
2014	0.031669		4.60
2015	0.030439		4.40
2016	0.029368		4.76
2017	0.029706		4.20
2018 proposed	0.028230		4.26